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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 JESSICA G.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.

CASE NO. C19-5663 BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
PROCEEDINGS**

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13 Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ
14 harmfully rejected her testimony about the impact her visual disturbances and limited use of her
15 hands have on her ability to perform work, and the Court should remand the matter for further
16 development of the record. Dkt. 10 at 1-2.

17 Plaintiff testified she suffers from pain in her eye, and sensitivity to light requiring her to
18 wear dark glasses; she further states looking at a book or a computer screen causes her vision to
19 get blurry and she thus has problems reading. Tr. 39, 43-44. The ALJ found plaintiff's "visual
20 disturbances" are a severe impairment, Tr. 18, but plaintiff retains the residual functional
21 capacity ("RFC") to perform sedentary work with the following limitations: "She is unable to
22 work with fast moving objects and needs to wear dark glasses in normal work environment, Tr.
23 20. The ALJ found plaintiff not disabled based upon the Vocational Expert's testimony that with

1 this limitation plaintiff can perform work as a document scanner, clerical mailer, and a suture
2 winder Tr. 27.

3 The ALJ erred. The ALJ acknowledged plaintiff's impairment causes blurry vision, and
4 light sensitivity, Tr. 20. Although the ALJ outlined the treatment plaintiff received for the
5 condition, the ALJ failed to discuss plaintiff's testimony about her blurry vision and accept it or
6 reject it. The ALJ also failed to explain how he arrived at the conclusion that her blurry vision
7 and eye pain only precluded work with fast moving objects. The Commissioner argues the ALJ
8 found plaintiff's testimony was contradicted by her daily activities. The argument fails because it
9 relies upon portions of the ALJ's decision regarding the ALJ's rejection of plaintiff's mental
10 limitations, not her vision problems.

11 The ALJ's failure is harmful because plaintiff stated her vision blurred when looking at a
12 screen or book, and she could not read. This limitation does not involve "fast moving objects."
13 However, the VE was only advised plaintiff could not work with fast moving objects and
14 accordingly found she could not work on as a bottling line attendant. Tr. 61. The VE was never
15 told plaintiff has blurry vision when looking at screens or books that impairs reading, and
16 without knowing about these limitations the VE opined plaintiff could perform work as a
17 document scanner, a clerical mailer, and a suture winder. The hypothetical presented to the VE is
18 thus deficient and there is no expert opinion as to whether plaintiff's blurry visual limitations
19 preclude the jobs the VE identified, which appear to require the ability to see or read items
20 clearly.

21 Plaintiff also testified her arms or hands are numb, especially her left extremity, and that
22 she drops things. Tr. 44, 46. The ALJ acknowledged plaintiff's testimony, Tr. 20 ("She has
23 diminished feeling in the left hand") but found plaintiff retains the RFC to "frequently reach with

1 left arm; and frequently feel.” Tr. 19. The RFC determination sets forth no feeling, reaching or
2 handling limitations regarding plaintiff’s left extremity; it thus appears the ALJ completely
3 rejected plaintiff’s testimony about her arm and hand numbness. There is no question the record
4 shows plaintiff suffers from pain and numbness in her arms. The Commissioner, however,
5 defends the ALJ’s decision arguing the medical record shows improvement and that plaintiff has
6 only mild to moderate arm and hand symptoms. Dkt. 11 at 4-5. But both the Commissioner’s
7 argument and the ALJ’s decision fail to explicate the basis for the RFC determination that
8 plaintiff can “frequently reach with left arm; and frequently feel.”

9 The medical records themselves do not establish this level of functionality, i.e., no
10 treating or examining doctor has stated plaintiff can frequently use her arms and hands. The lack
11 of a medical opinion about plaintiff’s functionality thus imposes on the ALJ the responsibility to
12 explain why or how the evidence establishes the ALJ’s RFC determination. The ALJ, however,
13 provided no explanation establishing why plaintiff’s mild-moderate symptoms allow her to
14 frequently reach or feel in contrast to a different limitation such as the ability to “occasionally”
15 reach or feel. *See e.g. Treichler v. Comm’r of Social Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir.
16 2014) (Agency must explain its reasoning because Court reviews administrative orders based
17 upon reasons provided by the ALJ.). The ALJ accordingly harmfully erred.

18 Although the ALJ did not refer to the records of treating doctor April McVey, M.D., the
19 Commissioner argues Dr. McVey’s treatment notes support the ALJ’s determination. Dkt. 11 at
20 5. On April 8, 2018, Dr. McVey stated under diagnosis: “Paresthesia and pain in both upper
21 extremities – primary.” Tr. 1002. The Commissioner argues the doctor’s indication under “no
22 longer an issue”: “numbness and tingling in left arm, left upper pain, weakness in left hand”
23 supports the ALJ’s RFC determination. The Court rejects the argument. Dr. McVey’s records are

1 contradictory. The doctor simultaneously diagnosed plaintiff's primary problem as "Paresthesia
2 and pain in both upper extremities" and stated these problems are no longer an issue. Further
3 despite stating the diagnosis was no longer an issue, the doctor prescribed Percocet, an opioid
4 "For diagnoses: **Numbness of left arm.** Acute pain of left shoulder, chronic pain syndrome."
5 (emphasis added). These contradictory statements indicate plaintiff's Paresthesia and pain in
6 both upper extremities are an issue and are not resolved. At a minimum, the contradictory
7 statements require further development of the record. *See Mayes v. Massanari*, 276 F.3d 453,
8 459-60 (9th Cir. 2001) (ALJ's duty to develop the record is triggered if there is ambiguous
9 evidence or if the record is inadequate to allow for proper evaluation of the evidence).

10 For the reasons above the Court **REVERSES** the Commissioner's final decision
11 **REMANDS** the case for further administrative proceedings under sentence four of 42 U.S.C. §
12 405(g). On remand, the ALJ shall reassess plaintiff's testimony, develop the record and
13 redetermine plaintiff's RFC as needed and proceed to the remaining steps as appropriate.

14 DATED this 3rd day of February, 2020.

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BRIAN A. TSUCHIDA
Chief United States Magistrate Judge